

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

REVA BERGER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-4929

Decision No. CU 1386

Counsel for claimant:

Gordon Slatkin, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by REVA BERGER in the amount of \$8,247.14, and is based upon the asserted ownership and loss of her interests in bonds issued by the Consolidated Railroads of Cuba. Claimant has been a national of the United States since her birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any right or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides;

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

On the basis of the evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of 9 bonds in the original face amount of 1,000 pesos each, and 2 bonds in the original face amount of 500 pesos each, issued by the Consolidated Railroads of Cuba, of an issue known as "3% Cumulative Income Debentures, due October 1, 2001", issued under an Indenture of February 1, 1953, with the United States Trust Company of New York as Trustee. The 1,000 peso bonds in question are Nos. RM 12179 through RM 12187, while the 500 peso bonds are Nos. RD 205 and RD 206.

Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), was a Cuban corporation. The Consolidated Railroads of Cuba thus would not qualify as a national of the United States under Section 502(1)(B) of the Act which defines the term "national of the United States" as including "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The record shows that Consolidated Railroads of Cuba was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bonds therefore represented a debt of a nationalized enterprise as defined in Section 502(3) of the Act (supra).

The Commission concludes that as a result of nationalization of the properties of the Consolidated Railroads of Cuba, claimant suffered a loss in connection with her bonds within the meaning of Title V of the Act. (See the Claim of Edward R. Smith, FCSC Claim No. CU-5001.)

Information available to the Commission establishes that the last payment of interest on the subject debenture was made on April 1, 1959; however, the nationalized enterprise owed, as of that date, a total of 14.3% of the face amount of the debentures issued for prior accumulation of unpaid interest. Claimant, therefore, sustained the loss of the face amount of her bonds, the 14.3% prior accumulation of interest, and interest at 3% per annum from April 1, 1959 to October 13, 1960, the date upon which the enterprise was nationalized by the Government of Cuba.

As to the dollar value of the bonds and interest, expressed in pesos, the Commission finds that the peso was valued at par with the dollar on the date of loss.

With respect to the 9 bonds in the original face amount of 1,000 pesos, the Commission finds that the amount of the unpaid indebtedness on claimant's bonds on October 13, 1960, the date of loss, was \$10,701.72, including the principal amount of \$9,000.00 and the interest due, to and including October 13, 1960, in the amount of \$1,701.72. As to the 2 bonds in the original face amount of 500 pesos, the Commission further finds that the amount of the unpaid indebtedness on October 13, 1960 was \$1,189.08, including the principal amount of \$1,000.00 and the interest due, to and including October 13, 1960, in the amount of \$189.08.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any greater or lesser amounts which may be asserted by the claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that REVA BERGER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eleven Thousand Eight Hundred Ninety Dollars and Eighty Cents (\$11,890.80) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

FEB 28 1968

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Clerk of the Commission

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE TO TREASURY DEPARTMENT: The above-listed bonds may have been returned to claimant and no payment should be made until they are re-submitted.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU-4929